nearly twice as high as Bell Atlantic's rate of 4.5%." DOJ Eval. 33. SBC also caused outages on an even higher percentage of AT&T's FDT orders (id. at 34-35), and failed to demonstrate compliance with the minimum standards for on-time provisioning and for trouble reports as well.[33]

SBC then repeatedly supplemented and corrected its data throughout the pendency of its application. These attempts to update the record with performance data for December, January and February were not only procedurally improper but substantively inadequate. As DOJ concluded, although SBC offered "additional and corrected data . . . SBC has not demonstrated that its hot-cut performance is as good as Bell Atlantic's hot-cut performance in New York, which the Commission found to be 'minimally acceptable.'" DOJ 3/20 Ex Parte Eval. 8-9.

SBC's second application reassembles the unreconciled and unvalidated data that it previously and improperly submitted in connection with its first application. It then packages that data with transparently inadequate excuses for its poor performance. None of this comes even close to making the showing of nondiscriminatory provisioning of hot cut loops required by this Commission and by section 271. That is true with respect to each of the three measures of

[33] See, e.g. DOJ Eval. 30-36; DOJ 3/20 Ex Parte Eval. 8-10; TPUC Reply Comments at 10 (confirming 8.2% order outage rate); AT&T Comments at 27-40; AT&T Reply Comments at 3-14; AT&T 3/6 Hot Cut Ex Parte at 6-11; AT&T 3/13 Hot Cut Ex Parte at 6-7; AT&T 3/29 Ex Parte at 5-7.

hot cut performance established in the BA-NY Order necessary to demonstrate "minimally acceptable" performance.[34]

A. SBC Causes Unlawfully High Percentages Of Service Outages

In Bell Atlantic New York, the Commission determined that a "minimally acceptable" showing with respect to outages was proof of outages on "fewer than 5 percent" of CLEC orders. BA-NY Order ¶ 309. This showing alone is critical to checklist compliance "because of the substantial risk that an untimely or defective cutover will result in an end-user customer's loss of service for more than a brief period, as well as the effect of such disruptions upon competitors." Id. SBC still has not made this showing.

The Reconciled Data: Representatives of AT&T and SBC have now submitted jointly sworn affidavits to the TPUC setting forth their mutually agreed-to analysis of all of AT&T's hot cut orders for the months of December, January, and February. See DeYoung/Van de Water Supp. Decl. ¶¶ 20-25 & Attachments A, B, C. Unlike SBC's self-reported data, these data are intended to capture all of the outages for which SBC is responsible, no matter what the cause. They also reflect AT&T's, not just SBC's, records. And these data measure SBC's outages on

[34] As the Commission is aware, AT&T's position is that the Act and this Commission's rules require a BOC to provide CLECs with the fewest number of outages and best on-time performance that it is technically feasible and commercially reasonable for the BOC to achieve. See Brief for AT&T et al., AT&T et al. v. FCC, No. 99-1538 (D.C. Cir. filed Jan. 27, 2000); 47 U.S.C. §§ 251(c)(3), 271(c)(2)(B), 47 C.F.R. § 51.311(b). That is the level of performance that SBC would achieve if it were competing with other providers to offer CLECs hot cut services in a competitive market. Of course, since SBC is the only source of hot cuts, and since it is providing hot cuts to its competitors, it has every incentive not to do its best but rather to allow as many outages as it can consistent with regulatory requirements. Since the level of outages is of great competitive significance (see BA-NY Order ¶ 309), the Act requires, and this Commission should insist, that SBC provide hot cuts with the least outages and delay that is technically and commercially feasible. Anything less unnecessarily institutionalizes unreasonable and anticompetitive conduct. See DeYoung/Van de Water Supp. Decl. ¶¶ 10-12, 110-12.

the basis of orders, not lines. These data are therefore directly analogous to the reconciled data on AT&T's outages on which the Commission based its analysis in the BA-NY Order. See id. ¶¶ 20-21, 26-27, 29, 96, 105-07.

But while the Commission found that Bell Atlantic's reconciled data showed that Bell Atlantic caused outages on only 4.5% of AT&T's orders during the three months preceding Bell Atlantic's application (BA-NY Order ¶ 302 & n.96), SBC's reconciled data tell a very different story. As set forth below, for the 90-day period from December through February on which SBC now relies, the reconciled data show that SBC caused outages on 16.7% of AT&T's orders. This rate is more than *three times* higher than in New York. It is far worse than even the 8.2% outage rate that was deemed inadequate by DOJ in SBC's first application. And it shows that SBC's performance deteriorated dramatically just when SBC had every incentive to improve it. SBC's outage performance thus falls far short of the minimum needed to give competing carriers a meaningful opportunity to compete.

ORDERS WITH SERVICE OUTAGES—RECONCILED DATA

Type of Provisioning Process	SBC-Texas[35] (Aug. – Oct.)	SBC-Texas[36] (Dec. – Feb.)
CHC	8.2%	11.1%
FDT	n/a[37]	20.8%
Combined	8.2%	16.7%
Minimally Acceptable: **fewer than 5%** orders with service outages BA-NY Order ¶ 309		

The poor quality of SBC's performance becomes even more alarming when the reconciled outage data are disaggregated. The disaggregated data show, for example, that SBC did not achieve three consecutive months of non-discriminatory performance for hot cuts provisioned under *either* its high-volume Frame Due Time ("FDT") process *or* its costly and capacity-constrained Coordinated Hot Cut ("CHC") process. See DeYoung/Van De Water Supp. Decl. ¶¶ 22-24. Thus, although SBC claims (Letter Br. 8) that "CLECs have their choice of two alternative processes in every case," that is true only in the sense that CLECs can "pick their poison" – an average outage rate of 11% for CHC, or 20.8% for FDT. DeYoung/Van De Water Supp. Decl. ¶ 20.

Moreover, the disaggregated data confirm that SBC's performance is only getting worse with time. SBC's worst month for outages, for both FDT and CHC orders, was also SBC's most

[35] Data for AT&T's hot cut orders, reconciled jointly by AT&T and SBC, and submitted to TPUC; see DeYoung UNE-L Decl. ¶¶ 83-87 & Att. 8; DOJ Eval. 32-33 & n.87; TPUC Reply Comments at 10.

[36] Data for AT&T's hot cut orders, reconciled jointly by AT&T and SBC, and submitted to TPUC; see DeYoung/Van de Water Supp. Decl. ¶ 20 & Att. C.

[37] AT&T and SBC conducted a trial of the FDT process in August, but AT&T did not send FDT orders to SBC in September and October.

recent month. Thus, in February, SBC caused outages on 25.5% of FDT and 27% of CHC orders – the equivalent of an outage on one of every four AT&T orders. And even after accounting for what SBC labels as a one-time software error (Conway/Dysart Supp. Aff. ¶¶ 10-11, 34), SBC's performance in February remains far below minimum standards, with outages on 13.2% of FDT orders and 11.1% of CHC orders.[38] In short, from any perspective, the reconciled data leaves no doubt that SBC's hot cut performance comes nowhere near to meeting the minimum standard set in the BA-NY Order.

SBC's Self-Reported Industry-Wide Data: Although SBC was fully aware that the reconciliation of outage data for December through February was to be completed in April, 2000 (see Conway/Dysart Supp. Aff. ¶¶ 14, 34), it chose to file its application before that reconciliation was completed. It thus discusses none of the reconciled data on outages. But even the non-reconciled, self-reported, industry-wide data that it relies upon shows that it is far out of compliance with the outage standard set in the BA-NY Order.[39]

For example, Performance Measure 114 reports on the number of hot-cut lines that SBC disconnected prematurely – that is, before the scheduled time for the cutover – and hence on which it caused an immediate and unexpected service outage.[40] This, of course, is only one of

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[38] Of course, SBC has repeatedly attributed numerous incidents of non-compliant performance to events that will not be repeated. See Pfau/DeYoung Decl. Even if each one of these problems is truly a one-time occurrence, the fact that such problems generally keep recurring confirms the importance of requiring proof of sustained non-discriminatory performance, rather than merely a prediction that past problems will not recur.

[39] Although the Conway/Dysart Supplemental Affidavit refers to "reconciled" data (see id ¶ 26), that reference is misleading; the reconciled data for outages from December through February were not compiled until two weeks after they filed their affidavit. See id. ¶ 35; DeYoung/Van de Water Supp. Decl. ¶¶ 34-35.

[40] See BA-NY Order ¶ 301 n.959; DeYoung/Van de Water Supp. Decl. ¶¶ 27-28; AT&T 3/6 Hot Cut Ex Parte at 2-3.

the ways in which SBC causes services outages for CLEC customers. Nevertheless, looking at just this sub-set of outages alone, SBC's own self-reported data for February show that SBC caused premature disconnects (and hence outages) on 4.2 % of all CLECs' lines ordered through FDT, and on 11.2 percent of CLEC's lines ordered through CHC. Conway/Dysart Supp. Aff. ¶ 9. Note, too, that SBC self-reports its data on the basis of lines, not orders, which, as DOJ found, "likely overstates SBC's performance as compared to" Bell Atlantic's. DOJ 3/20 Ex Parte Eval. 9. Thus, even SBC's own data for premature cuts alone, reported by lines and not orders, show that, for FDT, SBC was already at the maximum percentage for outages on orders, and that, for CHC, SBC was already far beyond the maximum.

In addition, SBC's myopic focus on outages due only to premature disconnects overlooks those outages on FDT orders caused by SBC's delayed cutovers. See DeYoung/Van de Water Supp. Decl. ¶ 27. These outages, which are reflected in SBC's reports for PM 114.1 for FDT Orders, show that SBC's delays caused outages on 6.3% of the FDT loops in January, and 11.1% of FDT loops in February. See id. ¶ 30; Conway/Dysart Supp. Aff. ¶ 13.[41]

Of course, the full dimensions of SBC's outage performance cannot be gleaned from SBC's industry-wide performance reports. In part, that is because those reports fail to measure outages due to defective cutovers, such as when the SBC technician attaches the new CLEC customer's jumper to the wrong cable and pair, or attaches the jumper incorrectly, or uses a defective wire, or errs in changing the switch translations. DeYoung/Van de Water Supp. Decl. ¶ 32. The data from AT&T's reconciliation with SBC show that about 45% of the service outages that SBC caused on AT&T's orders between December and February were due to

[41] These percentages substantially understate the number of FDT outages due to delayed cutovers alone. See DeYoung/Van de Water Supp. Decl. ¶ 29.

defective cutovers. Id. ¶ 46 & Attachment F. Submitting data on outages due to defective cuts is thus an essential element of any BOC's prima facie case of compliance with the Commission's minimum standards of hot cut performance. See BA-NY Order ¶ 301 n.959. SBC's failure to provide this Commission with any data on defective cutovers is itself grounds for rejecting its application.

SBC offers partial explanations for only those outages due to premature disconnects, and these explanations are unsupported by any data and inadequate on their face to excuse SBC's patently discriminatory performance. First, SBC claims that "many" of its premature disconnects were due to a "process breakdown" in the way SBC handles cutovers for customers served by Integrated Digital Loop Carrier ("IDLC") facilities, and that SBC has now fixed that process. Conway/Dysart Supp. Aff. ¶¶ 29, 30. But SBC provides no data on the number of premature disconnects caused by this problem, and AT&T's data show that virtually none of its outages were attributable to this cause. DeYoung/Van de Water Supp. Decl. ¶¶ 41-42. Moreover, SBC offers no reason why its method of fixing the IDLC process – which was to issue two new "Flash" announcements to its technicians – should be any more effective than its issuance of two other "Flash" announcements last October and December directed at the same problem. Id.

Second, SBC claims that certain outages (again, it provides no data on how many) were caused by SBC mistakenly processing FDT orders as if they were CHC orders. Conway/Dysart Supp. Aff. ¶¶ 29, 31. Although SBC says that it has now "retrained" its personnel to avoid these mistakes (id. ¶ 32), this is simply an unproven promise of future performance. Left entirely unexplained is how SBC will eliminate all of the other causes of outages, such as defective cutovers, that also contribute to its abysmal overall outage performance.

Finally, SBC defends its decision to report its outage performance on the basis of "lines" rather than "orders" as providing a more "revealing" test. SBC Letter Br. 9 n.10. In fact, as noted above, SBC's reliance on lines tends to overstate its performance as compared to Bell Atlantic's. To measure performance using lines to report an outage rate that is equivalent to Bell Atlantic's, a different – and lower – percentage of outages would need to be established. See DeYoung/Van de Water Supp. Decl. ¶¶ 108-09. In any case, as the reconciled outage data show, SBC's performance far exceeds the "fewer than 5% standard" whether measured by orders or by lines. Id. ¶¶ 37-39.

B. SBC Fails To Provision Hot Cuts On Time

In the BA-NY Order (¶¶ 296, 309), the Commission held that Bell Atlantic's on-time performance was minimally acceptable, in part, because it provisioned orders of fewer than 10 loops within the "prescribed time interval" of one hour at least 90 percent of the time. SBC does not meet that standard, either.

SBC's new data for prolonged cutovers (PM 114.1) for CHC lines show that SBC was late in completing cutovers on 14.5% of CLEC lines in January, and that its performance deteriorated to being late on 21.5% of CHC lines cutover in February. See Conway/Dysart Supp. Aff. ¶ 13 (reporting data under PM 114.1). Even assuming, favorably for SBC, that its reporting by lines does not "overstate" its performance as compared to Bell Atlantic's, that is a far cry from the BA-NY Order standard of completing no more than 10% of orders outside the prescribed interval.

Moreover, SBC's data on late cutovers reveals only a portion of its discrimination. First, by definition, the data reported under PM 114.1 exclude many late CHC cutovers. That is because the performance measure itself is erroneously defined to exclude capture of those instances when SBC fails promptly to notify the CLEC that SBC has completed its work on a

CHC cutover, thus failing to capture delays that directly translate into service outages for CLEC customers. See DOJ Eval. 31-32 n.84; DOJ 3/20 Ex Parte Eval. 9; DeYoung/Van de Water Supp. Decl. ¶¶ 53-54, 101. Second, the data under PM 114.1 do not capture cutovers that started too early. In the BA-NY Order, the Commission acknowledged that a BOC's performance on premature cutovers – which, as noted above, always cause service outages – is relevant also to the BOC's on-time performance. BA-NY Order ¶ 301 n.959. Thus, SBC's poor performance in causing premature disconnects (which is captured by PM 114, discussed above), simply compounds SBC's already-inadequate on-time performance as shown in PM 114.

Here again, SBC offers no valid excuse for its failure to meet the requisite performance standards. First, SBC claims that its on-time percentage under PM 114.1 improves several percentage points if CLEC-caused misses are excluded. See Conway/Dysart Supp Aff. ¶¶ 12-14. Of course, invoking CLEC-misses, on its face, does nothing to cure the definitional limitations of PM 114.1 that prevent it from capturing all of the cutovers on which *SBC* caused delays. But even on its own terms, the explanation is inadequate because SBC offers no evidence to support it. Specifically, (1) SBC does not define what errors it unilaterally has included in that category and (2) SBC provides no data to support its recalculated percentages that purport to apply its unstated definition. See DeYoung/Van de Water Supp. Decl. ¶¶ 56-59. Even the anecdotal example of one CLEC-caused miss, which SBC describes only in a one-sentence footnote, appears to be unsubstantiated by any facts. Id. ¶ 45 n.20. SBC's unverifiable claims of CLEC-caused misses thus appear to be wildly overstated and wholly arbitrary.

SBC's only other argument is to point to the number of lines SBC cut over within a two-hour, rather than a one-hour, interval. SBC Letter Br. at 9; Conway/Dysart Supp. Aff. ¶ 12. SBC's justification is that the TPUC set a two-hour interval for completing orders of up 24

loops, and so it should be held to that standard instead. But although SBC wants the Commission to accept the TPUC's two-hour completion interval, it is unwilling to accept the TPUC's performance standard for that interval, which is 100% on-time. Instead, SBC wants twice the provisioning time that Bell Atlantic was given, but still wants the same license Bell Atlantic got to be late on 10% of its cutovers.

This "mix-and-match" of different standards has no basis in logic or law. Most hot cut orders are for fewer than 10 lines, and orders for 20 or more loops are exceedingly rare. It is therefore arbitrary to set an interval based on how long it should take the BOC to cutover a 24-loop order, when on average each order is for fewer than 5 loops. A two-hour provisioning interval for normal hot cut orders is fundamentally inconsistent with a meaningful opportunity to compete.[42] Indeed, SBC has now proposed to disaggregate its performance reports to show compliance with a one-hour interval for orders with 10 or fewer loops.[43] But if SBC is given an extra one-hour cushion to complete such orders, then fairness requires that it complete all of its orders on time. DeYoung/Van de Water Supp. Decl. ¶¶ 60-62. Needless to say, SBC has yet to meet that standard. Id.

C. SBC's Reported Trouble Rate On Newly Cutover Loops Is Too High

Finally, the Commission's minimum standard requires proof that CLECs have reported troubles on fewer than 2% of their lines within seven days of the cutover. BA-NY Order ¶ 309. Although SBC comes closest to compliance with this measure, it is still not in compliance yet. For December, January, and February, CLECs reported troubles on 2.8%, 2%, and 4%,

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[42] See DeYoung/Van de Water Supp. Decl. ¶ 60; see also DeYoung Decl. ¶¶ 148-54; DeYoung Reply Decl. ¶¶ 13-16.

[43] See DeYoung/Van de Water Supp. Decl. ¶ 101.

respectively, of lines within seven days. See DeYoung/Van de Water Supp. Decl. ¶ 67. Thus, not once did SBC's performance dip below 2%, which is particularly significant because Bell Atlantic's average rate of trouble reports was 0.7%, and even in its worst month Bell Atlantic reported a trouble rate of only 1.26%. See BA-NY Order ¶ 300 n.956.

Once again, there is no legitimate excuse for SBC's non-compliance. Instead, SBC has manufactured an excuse by reporting its trouble data for a 10-day, rather than a seven-day, period. See Conway/Dysart Supp. Aff. ¶ 19 ("[i]n order to provide the FCC with a more manageable comparison to Bell Atlantic . . . SBC undertook a manual breakdown of its I-30 report for December into reports received . . . within 10 days").[44] What SBC fails to explain is why, if it had to assemble that data manually, it did not "undertake" to provide the Commission with the far more "manageable" comparison of trouble reports within seven days. It is only reasonable to assume that, if the seven-day data would have helped SBC, it would have reported it. SBC's 10-day reports therefore operate only to provide SBC with an excuse for why it causes CLECs to experience more trouble with their cutover lines than Bell Atlantic did. See DeYoung/Van de Water Supp. Decl. ¶ 70.

D. SBC's Flawed Data Collection Processes And Incomplete Performance Measures Deny CLECs A Meaningful Opportunity To Compete

SBC's flawed performance on any one of the preceding measures of hot cut provisioning performance is an independent reason why SBC has failed to prove that it is providing CLECs with a meaningful opportunity to compete using hot cut loops. But there is another, equally

[44] SBC's "I-30" Report is SBC's state-mandated measure of troubles reported within 30 days on new loops provided to competitors. Because nearly all of AT&T's new loops are hot cut loops, SBC's I-30 is also a useful alternative measurement of the quality of SBC's hot cut provisioning as to AT&T. SBC's reported performance for AT&T, as captured in the I-30 reports, shows that SBC regularly fails to meet the state-mandated standard of performance. See DeYoung/Van de Water Supp. Decl. ¶¶ 71-72.

fundamental reason. SBC's failure to develop accurate data collection processes, and to define complete performance measurements, means that SBC has yet to put in place the basic building blocks needed to track its performance in a wide-open, fully competitive marketplace. Indeed, the only way CLECs and regulators can now measure SBC's hot cut performance accurately is through laboriously sitting down with SBC to sift through the raw data, order by order, to determine what happened and which company was responsible. That process – essential though it has been in getting an accurate picture of the nature of SBC's hot cut provisioning – is fundamentally incompatible with the demands of a competitive market. CLECs will have a meaningful opportunity to compete only if SBC establishes processes that accurately record its provisioning performance and then reliably report on all relevant aspects of that performance. Today, SBC does neither.

First, SBC's data collection processes for hot cuts are wholly inadequate. For example, as the DeYoung/Van de Water Supplemental Declaration (¶¶ 74-94) explains in detail, SBC is entirely dependent on non-mechanized and inconsistent manual reporting of facts relating to hot cut provisioning. As a result, SBC's performance reports severely understate the degree of provisioning problems. In February, for example, SBC identified fewer than one-tenth of the outages that AT&T identified that needed to be reconciled with AT&T. DeYoung/Van de Water Supp. Decl. ¶ 82. Similarly, SBC's provisioning logs for the 90-day period under review contained evidence of many premature disconnects that were not captured in SBC's performance reports. Id. ¶ 86. These and other pervasive errors and inconsistencies in SBC's gathering and reporting of data render all of SBC's self-reported hot-cut data unreliable. Id. ¶¶ 82-94.

Second, SBC's performance measures are incomplete or inadequate in several critical respects. See id. ¶¶ 95-109. As noted above, none of SBC's existing measures is defined to

capture outages due to defective cuts. In addition, the measure of prolonged cutovers (PM 114.1) is defined so narrowly that it omits instances when SBC fails to notify the CLEC that SBC's work on the CHC process is complete; since the CLEC awaits that notification before taking the final steps to put the customer back in service, this "gap" in PM 114.1 is very serious and customer-affecting. SBC is now working with CLECs and the TPUC to fix these and other problems with its hot cut (and other) performance measurements, and AT&T is hopeful that these measurement problems will be solved. See id. ¶ 95. But as matters currently stand, the inadequacy of SBC's measures and the unreliability of SBC's reporting continue to delay meaningful competition in Texas.

III. SBC HAS NOT ESTABLISHED COST-BASED RATES FOR THE UNE-PLATFORM

AT&T demonstrated in its opening comments that SBC failed to demonstrate that three of its very substantial non-recurring charges for providing the UNE-platform were cost-based. AT&T showed that, in reality, these are "phantom glue charges" that have the purpose and effect of unlawfully compensating SBC for work that SBC never performs and may not lawfully perform when provisioning existing combinations of elements. AT&T Comments at 50-55. On reply, AT&T further demonstrated that the TPUC's defense of these phantom glue charges rested on a theory of "averaging" that conflicts not only with SBC's prior explanations of the charges and with the evidentiary record, but with the TPUC's own prior explanation of its decision – in hearings, written decisions, and repeated written and oral submissions to the District Court and the Fifth Circuit – that these charges were simply glue charges required by the Eighth Circuit's

now-reversed decision in Iowa Utilities. AT&T Reply Comments 24-33.[45] Thus, neither SBC nor the TPUC has been able to advance a consistent or coherent defense of these non-recurring charges as anything other than non-cost-based phantom glue charges that are patently unlawful under the plain language of the Act. 47 U.S.C. §§ 251(c)(3), 252(d)(2), 271(c)(2)(B)(i), (ii).

Significantly, SBC has now entirely abandoned its futile effort to defend its prior claim that it had previously shown these rates to be cost-based. See SBC Reply Br. 58. Specifically, in the pending proceedings before the TPUC, SBC has now unequivocally admitted that there is no evidence in the record before the TPUC (and hence before this Commission) that either supports or could support a finding that the now-suspended non-recurring charges are cost-based. For this reason, SBC claims that "a Phase II evidentiary hearing" is needed at the TPUC in order to determine "what SBC's forward-looking economic costs are when existing combinations are provided." See SWBT TPUC Br. 7 (attached hereto as Ex. G).

Notably, SBC has made it crystal clear that new evidence is needed to establish a cost-basis for its non-recurring charges. It has now conceded to the TPUC that the prior "Mega-Arbitration did not address cost support for NRCs for existing combinations" (id. emphasis added).[46] SBC has further stated that in Phase II, "[t]he parties now have an opportunity for the

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[45] AT&T also demonstrated that SBC's "Central Office Access Charge" ("COAC") is unlawful, because it concededly is not cost-based and because the Eighth Circuit rationale on which SBC relies was rejected by the Supreme Court in Iowa Utilities. AT&T Comments at 55-57.

[46] That is not to say that SBC did not have an *opportunity* to address this issue in the MegaArbitration, for it did. The principal hearings in which evidence was taken on SBC's Texas UNE rates were largely completed *before* the Eighth Circuit issued its decision, on rehearing, to vacate Rule 315(b). AT&T demonstrated in those hearings that SBC's non-recurring charges lacked any cost-basis because SBC had already recovered, in its Service Order Charge, for the only work it could lawfully do to provision UNE-combinations. AT&T thus put SBC's glue charges squarely in issue. Accordingly, if SBC had had any cost-basis to support its glue charges, it could and should have brought forth that evidence during the arbitration.

first time to offer evidence of cost-based rates for the work of providing existing combinations of loops, ports, and cross-connects under the standard announced by the Supreme Court in Iowa Utilities Board." Id. at 5 (emphasis added); see id. at 8 ("the parties did not offer evidence based upon the now-current standard during the Mega-Arbitration.").[47] There is thus – by SBC's own admission – no basis in this record to support a finding that its non-recurring charges are cost-based.

Second, contrary to SBC's misrepresentation (Reply Br. 58), SBC has not "eliminated" these charges. Rather, as AT&T demonstrated in an ex parte submission, SBC only temporarily suspended the collection of these charges on March 1, 2000, "subject to true up" should the TPUC agree with SBC, at the conclusion of a pending state pricing proceeding, to reinstate the charges. See AT&T Pricing Ex Parte. Thus, SBC not only has not refunded the charges it unlawfully collected from AT&T and other CLECs prior to March 1, 2000 but it has retained the right to charge an unknown amount on all UNE-platform orders from March 1, 2000, forward. SBC therefore has not remedied the unlawfulness of its glue charges, and it has not provided this Commission with any evidence to support a finding that it has established cost-based rates for the UNE-Platform. On this basis as well, its application must be denied.

Indeed, by suspending the collection of its unlawful charges pending the TPUC's complaint proceeding and conceding the lack of any cost-support in the record, SBC effectively transformed its permanent non-recurring charges into interim non-recurring charges. It wants

[47] Of course, the latter statement is true only as to SBC, because AT&T did offer evidence under the "now-current" standard that, because SBC incurred only service order-processing costs in connection with the provision of existing combinations, SBC was entitled to recover only those costs. See, e.g., Brief of AT&T Communications of Texas, L.P., et al., filed in Complaint of AT&T Communications of Texas et al. to Eliminate Non-Recurring Charges, at 25-27, Docket No. 21622) (Texas PUC Apr. 5, 2000) (citing evidence).

CLECs to order now and pay later. And by pressing to have its 271 application approved now and its glue charges reinstated later, SBC is attempting to evade review of those charges by this Commission and the D.C. Circuit. The Commission should not allow itself to become an accessory to SBC's "administrative law shell game." AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992).

The Commission may approve a BOC's 271 application only if it can make a "written determination" that the BOC "is providing" access to network elements at cost-based rates. 47 U.S.C. §§ 271(c)(2)(A)(i)(I), (B), (d)(3); see also id. § 271(d)(3)(A)(i) (Commission must find that BOC "has fully implemented" its duty to establish cost-based rates). With SBC's rates for the UNE-platform not yet established, it is impossible for the Commission to make this required finding. Congress was explicit, moreover, in declining to give the Commission authority to add to, subtract from, or forbear from enforcing a BOC's checklist requirements. Id. §§ 160(d), 271(d)(4)

To approve a section 271 application with interim rates for the UNE-platform would also conflict with the Commission's prior orders. The Commission made clear that Bell Atlantic's decision to eliminate its glue charges altogether was important to the success of its application. BA-NY Order ¶ 262. And although the Commission did approve Bell Atlantic's New York application despite the presence of "a limited number of" interim rates, the Commission also made clear that it would not approve a future application containing interim rates if "any" of several "confidence-building factors" were absent. Id. ¶¶ 259-60.

As AT&T previously explained, none of those factors is present here. See AT&T Pricing Ex Parte at 2-3. Most notably, the charges at issue here are not limited to a "few isolated ancillary items" (BA-NY Order ¶ 258), but apply to each and every order for the UNE-platform,

the principal vehicle for residential competition in Texas. Equally dispositive, these charges are not for a "new service" for which the state commission has not had an opportunity to set rates (id. ¶ 259), but for an arrangement that CLECs have been seeking in Texas for four years, and that has been vigorously litigated throughout that period.[48] In short, the lack of permanent cost-based rates for the UNE-platform at this late juncture is simply inexcusable.

At bottom, the issue with respect to SBC's UNE pricing is simple. None of the "installing" or "testing" or "maintaining" that SBC previously asserted to justify its glue charges is required to provision the UNE-platform. Numerous other state commissions have so held, see Rhinehart Decl. ¶¶ 49-51 (summarizing other state commission decisions), and SBC has now effectively conceded the point. The phantom glue charges to which SBC and the TPUC have clung for so long have no lawful basis whatsoever. If SBC were serious about having this application approved, it should have done what Bell Atlantic did, and eliminated the charges entirely.

IV. SBC'S RECENT PERFORMANCE PENALTIES CONFIRM SBC'S PERVASIVE NONCOMPLIANCE WITH THE CHECKLIST

SBC's supplemental application does not address the devastating reality of its overall discriminatory performance as captured in its performance measurements. But SBC's failure to provide CLECs with nondiscriminatory access to interconnection and unbundled network elements is now a matter of indisputable record, both before the TPUC and in this proceeding. For each of the four months ending February 2000, SBC has reported noncompliance with the

[48] In addition, the "true-up" that SBC seeks here serves only to increase, rather than alleviate, the uncertainty created by the interim rates. See BA-NY Order ¶ 259. Finally, the TPUC's "track record" (id. ¶¶ 259, 261) shows continued support for these unjustified glue charges even after the Supreme Court eliminated any basis for them. Thus none of the confidence-building factors is present here.

parity or benchmark standards established by the TPUC on about *one out of every five* of the "Tier 2" Texas performance measurements – which the TPUC has described as the "most critical, customer and competition-affecting measures." Pfau Supp. Decl. ¶ 3.

As a result, first in January, and again in February 2000, SBC was compelled to pay to the Texas State Treasury over $400,000 in Tier 2 penalties. Id. ¶ 16.[49] These penalties are levied only for persistent noncompliance with the most critical measures, and they arise only when SBC's performance has been below the parity or benchmark level for three consecutive months for all CLECs in the aggregate. See id. ¶ 17. These penalties thus confirm that SBC has been providing CLECs with sustained discriminatory performance on competitively critical measures.

Worse still, SBC's performance has worsened significantly since its initial application, during which time CLEC volumes have increased. Pfau Supp. Decl. ¶¶ 3, 9. That is precisely the opposite of Bell Atlantic's reported improvement in performance in the face of increasing volumes that the Commission found significant in the BA-NY Order. See id. ¶¶164, 169. It is also precisely the opposite of what should be expected of a BOC with a pending 271 application, whose incentive to avoid such discrimination is presumably at its zenith during the months immediately preceding and during the pendency of its application. Pfau Supp. Decl. ¶ 17. If SBC – under the intense scrutiny of both state and federal regulators – is not required to achieve the targets it agreed to for these important measures, it cannot reasonably be expected to achieve them once that scrutiny is removed.

Moreover, SBC is not coming close to demonstrating compliance with the Tier 2 test. Thus, the penalties were levied despite the fact that SBC's compliance rate to avoid penalties

[49] Even though SWBT paid such enormous penalties to the state, it paid only a paltry amount to CLECs (e.g., a payment of only $450 in December, 1999); this disparity reflects fundamental flaws in the structure of SBC's penalty plan. See Pfau Supp. Decl. ¶¶ 15-20.

was set only at 90% rather than the 95% needed to demonstrate parity performance. See id. ¶¶ 5, 7, 10 & n.6. Indeed, SBC's reported performance here is so poor that it fails to pass the Tier 2 test even under SBC's unfounded and unduly lenient interpretation of the standard. Pfau Supp. Decl. ¶¶ 10-12. Finally, SBC's performance failure is evident even without reference to the unreliability and instability of SBC's data gathering and reporting processes. See id. ¶¶ 13-14. In short, SBC has not met the requirements for nondiscriminatory performance that SBC and the TPUC agreed that it should meet. It follows necessarily that SBC has not fully implemented the competitive checklist.

V. SBC FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS.

In an effort to demonstrate that it will provide CLECs with nondiscriminatory access to OSS, SBC offers an array of new promises to fix numerous defects that CLECs have identified. In particular, SBC promises to address three specific OSS problems: (1) the high rate at which SBC's systems reject CLEC orders; (2) the inability of CLECs to integrate SBC's proprietary pre-ordering interface with SBC's EDI ordering interface; and (3) SBC's failure to comply with change management requirements. See SBC Letter Br. at 5-8; Ham Supp. Aff. ¶ 2. Such promises of future compliance – most of which were made for the first time only days before the filing of SBC's supplemental application – are patently inadequate to meet SBC's burden of proof on either the particular problems they address or the broader problem of SBC's pervasive OSS non-compliance. As the Commission has repeatedly stressed, "promises of future performance . . . have no probative value in demonstrating [a BOC's] present compliance with the requirements of section 271."[50] Thus, SBC's heavy reliance on promises of future actions to

[50] Second BellSouth Louisiana Order ¶ 56 n.148; Ameritech Michigan Order ¶¶ 55, 179; BellSouth South Carolina Order ¶ 38.

address some of its specific OSS deficiencies only confirms that SBC is not yet providing the nondiscriminatory access to OSS that Section 271 requires.

Even SBC's paper promises do not cure some of its longstanding deficiencies. For example, CLECs lack parity access to the superior front-end edit functionality available in SBC's retail ordering environment, which causes CLECs to receive manually created rejects that are plagued with attendant delays. Similarly, even after SBC implements its paper promise to accept conversion orders submitted over its EDI interface without requiring that the customer's service address be included, SBC's interfaces will still not be fully integratable. Most notably, service addresses will still be required in connection with new orders, and error-free submission of those addresses is not possible because of SBC's failure to provide parsed address information that is returned from the address validation query in SBC's proprietary pre-ordering interface. Furthermore, in an area that is becoming more problematic as volumes grow and as SBC wages its own retail campaign aimed at persuading customers to add second lines, SBC's failure to provide ordering requirements that facilitate an efficient conversion of CLEC multi-line customers in a nondiscriminatory fashion is further evidence of its failure to provide parity of access to its OSS.

Moreover, SBC's paper promises do not compensate for an abundance of evidence that SBC's OSS are not operationally ready to handle increasing volumes of CLEC orders. Despite Telcordia's concern about SBC's inadequate expansion planning for systems that process CLEC pre-order and order activity and its observation that SBC processor utilization rates reached nearly 100% during capacity testing, SBC has not improved its scalability planning, even though it promised to do so by January 2000. In another area, the stress of handling increasing order volumes already is evident in an alarming drop in provisioning accuracy rates. According to

SBC data, nearly 10 percent of CLEC orders (and 15 percent of AT&T's UNE-P orders) were not provisioned accurately.

Further, if past performance is relied upon as the best indicator of future compliance, there is much reason for doubt that SBC's OSS promises will be kept. SBC still has not implemented versioning, despite a TPUC order requiring it to do so no later than January 15, 2000. SBC's other failures in the area of change management also preclude a finding that it provides nondiscriminatory access to its OSS. SBC has introduced all interface release requirements so far this year using the "exceptions" process, after already declaring that 1998 and 1999 were "exceptions years." Moreover, SBC recently acknowledged that "due to the short timeframes and the enormous amount of work" associated with developing certain interface requirements, that "mistakes were made." See Chambers/DeYoung Supp. Decl. ¶¶ 27, 41 & n.12. SBC's continuing failure to implement a test environment that mirrors the production environment adds to the risks associated with poor interface release management and implementation.

A. SBC's Rejection Rates Remain Unacceptably High

As SBC itself acknowledges, its overall rejection rate for CLEC orders (which includes CLEC orders submitted via both LEX and EDI) was still 30.5 percent in February. Ham Supp. Aff. ¶ 33. The rejection of almost one-third of all CLEC orders is unreasonable by any standard. Moreover, SBC's rejection rate has not changed appreciably in recent months. SBC's overall rejection rate was 33.4 percent in November, 30.6 percent in December, 34.2 percent in January, and 30.5 percent in February. See Chambers/DeYoung Supp. Decl. ¶ 86. SBC's February rejection rate thus showed no significant improvement over its performance over the prior three months.

SBC's attempt to argue that the minuscule decline in its CLEC order rejection rate in February represents improved performance is specious. In addition to the fact that the numbers do *not* show any significant improvement, SBC completely ignores the fact that the slight decline in its rejection rates in February was due in part to its transition (in mid-January 2000) to returning jeopardy notices, instead of rejection notices, when errors are detected after SBC returns a Firm Order Confirmation ("FOC"). SBC itself had previously predicted that its rejection rate would decline "dramatically" as a result of this change. See Dalton/DeYoung Reply Decl. ¶ 33; Conway Aff. ¶ 51. While this change may have reduced the number of order rejection notices, it resulted in a large increase in the number of jeopardy notices received by CLECs beginning in mid-January, approximately half of which were for reasons previously captured in "post-FOC" rejection notices. In the case of UNE-P orders, for example, the total number of jeopardy notices, and the volume of those notices that had "post-FOC" errors, received by AT&T between December 1999 and March 2000 were as follows (Chambers/DeYoung Supp. Decl. ¶ 93):

Month	Total Jeopardy Notices	Total Jeopardy Notices With Post-FOC Errors
December	82	0
January	206	81
February	848	565
March	961	488[51]

Equally disingenuous is SBC's attempt to compare the rejection rate for its EDI interface alone with Bell Atlantic's rejection rate for all of its ordering interfaces. See SBC Letter Br. 5-6.

[51] Although a recent filing by SBC before the TPUC reports a greater volume of jeopardy notices for AT&T than the above-described data (perhaps because SBC's data may include all jeopardies sent to AT&T, and not simply jeopardies sent on UNE-P orders), SBC's data nonetheless confirm that approximately 50 percent of jeopardy notices sent to AT&T were issued for "post-FOC" errors. See Chambers/DeYoung Decl. ¶ 93 & n.43.

Indeed, SBC's own witness calls this an "apples and oranges" comparison (Ham Supp. Aff. ¶ 51), because, by excluding rejections of CLEC orders submitted over its LEX interface, SBC disregards the higher rejection rates experienced by CLECs using that interface. In fact, when comparable overall order rejection rates (including both EDI and LEX) are used, SBC's reject rates are well above those reported by Bell Atlantic. See Chambers/DeYoung Supp. Decl. ¶¶ 88-90.

SBC's contention that its high CLEC rejection rates are the result of the CLECs' "own business choices" (Ham Supp. Aff. ¶ 2) is also without merit. CLECs have a strong incentive to reduce the number of order rejections to an absolute minimum. While there are variations among CLECs in the percentage of orders rejected from month to month, nearly every CLEC continues to experience unacceptably high rejection rates. See Ham Supp. Aff., Att. K. In these circumstances, SBC's reliance on the better rate (13.5%) achieved by one lone CLEC in February is frivolous.

The difficulties experienced by CLECs as a result of SBC's high rejection rates are compounded by the fact that, by SBC's own admission, more than one-third of SBC rejection notices are manually typed by a SBC representative before they are sent to the CLECs – a process that has led to excessive delays in the return of rejection notices and an inherent risk of error. See Chambers/DeYoung Supp. Decl. ¶¶ 99-106. Indeed, the percentage of manual rejection notices reported by SBC is even higher – 35% in February – now than it was at the time of its initial application. Id. ¶¶ 99-100.[52] The frequency with which reject notifications are

[52] SBC has also not shown that its flow-through rate for CLEC orders is at parity with either the rate for SBC's retail operations or the flow-through rate reported by Bell Atlantic, particularly in view of the low flow-through rate for CLEC orders submitted through the LEX interface. *See* Chambers/DeYoung Supp. Decl. ¶¶ 107-09.

manually created by SBC representatives is the direct result of SBC's failure to meet its commitments to enhance front-end edit capability in LASR or MOG, from which fully electronic rejects can be generated. SBC's lack of progress in implementing edits that will generate electronic error messages stands in stark contrast to the far superior upfront edit capability available to SBC retail representatives using EASE. Errors on SBC's retail orders are caught by more than 3,000 "on screen" edits that allow all but a small portion of errors to be detected electronically before submission of the order; the small percentage of errors that are not detected before submission are returned automatically from back-end systems. In contrast, there are only 800 upfront edits in LASR/MOG. See Dalton/DeYoung Decl. ¶¶ 121-22; Chambers/DeYoung Supp. Decl. ¶¶ 104-06.

SBC is also returning a substantially larger number of jeopardy notices to CLECs, more than half of which are for errors in the order that should have been detected before issuance of a FOC rather than through the jeopardy process. See Chambers/DeYoung Supp. Decl. ¶¶ 93, 112. Apart from imposing unduly high rejections and jeopardies on CLECs, SBC is still not returning status notices, including FOCs and order completion notices, to CLECs in a timely manner. See id. ¶¶ 114-18. In addition, CLECs continue to experience both complete service outages and service degradations (such as inability to receive incoming calls or excessive static) at unacceptably high levels in connection with UNE platform conversions, due in part to SBC's "three-order" system – problems that should not arise at all because there should be no change in existing facilities involved in such conversions. See id. ¶¶ 136-45. And SBC continues to impose discriminatory ordering requirements on CLECs seeking to migrate SBC customers with multiple lines to the CLEC. See id. ¶¶ 121-25.

B. SBC Still Has Not Provided CLECs With The Ability to Integrate Its Pre-Ordering and Ordering Interfaces

SBC still has not provided CLECs with integrated (or integratable) pre-ordering and ordering interfaces at a level of parity with that available to SBC's own retail operations. As a result, CLECs still cannot integrate SBC's DataGate pre-ordering interface with its EDI ordering interface, because service address information, a key element of the pre-ordering information retrieved through DataGate, is not provided in a parsed format that would allow it to be automatically populated into EDI ordering fields, and SBC has not provided CLECs with the parsing conventions that it uses. Chambers/DeYoung Supp. Decl. ¶¶ 48-49. Moreover, there is no apparent reason for SBC's refusal to provide parsed address information in the address validation function of DataGate in view of the fact that another SBC affiliate, Pacific Bell, has done so, and SBC has been able to do so in its EDI/CORBA pre-ordering interface. Id. ¶ 50.

Nor does the experience of Sage and Navigator show that DataGate can be integrated successfully with SBC's EDI ordering interface. Quite the contrary, the experience of those two CLECs confirms that the address validation function of DataGate cannot be integrated with EDI. Thus, both Sage and Navigator make clear that they are bypassing the address validation function of DataGate precisely because it *cannot* be successfully integrated with EDI for ordering. Moreover, both Sage and Navigator state that they are continuing to experience address validation "difficulties" and "problems" caused by the current lack of integratability of the address validation function. See Chambers/DeYoung Supp. Decl. ¶¶ 56-57; Ham Supp. Aff., Atts. A & B. Instead, Sage and Navigator are attempting to use address information obtained from the customer service record ("CSR"), which comes from a different database, (see Chambers/DeYoung Supp. Decl. ¶¶ 57-58), and which increases the likelihood that orders will be rejected for invalid addresses. Indeed, SBC itself attributes the high address error rates

experienced by one of these CLECs in January to their "using parsed CSR address information obtained from the CSR, which was not found to be a valid address" by SBC's address validation systems. Id. ¶ 59; Ham Supp. Aff. ¶ 21.[53]

Unable to show that it has solved these problems of lack of integratability of its pre-ordering and ordering interfaces and excessive CLEC order rejections, SBC relies instead on promises that it will take action in the future to address those deficiencies. For example, SBC proposes to implement a "programming enhancement" at the end of May that will eliminate the need for CLECs to include service address information on EDI orders for the conversion of a customer's service (other than xDSL loops) to a new carrier. Ham Supp. Aff. ¶¶ 2, 24-26. While that proposed change should reduce one problem, it will not solve all of SBC's interface integration problems, because CLECs will still be required to provide parsed address information for other types of orders, such as new connects, and thus will still be unable to auto-populate the service address returned from a DataGate address validation query into the appropriate ordering fields. DeYoung/Chambers Supp. Decl. ¶¶ 73-75. Moreover, that proposed enhancement has not yet been implemented by SBC, and SBC's proposal to use the address information in the CSR creates the likelihood that more CLEC orders will fall out for manual processing, thereby raising scalability concerns and producing a higher risk of errors and delays. See id. ¶¶ 71-72; Dalton/DeYoung Decl. ¶¶ 241-44 (discussing scalability of SBC's work force).

Similarly, SBC asserts that it "has retained" General Electric Global Exchange Services ("GE") to assist CLECs in integrating SBC's interfaces. SBC Letter Br. 7; Ham Supp. Aff. ¶ 15.

[53] Annexed hereto as a confidential attachment is a brief discussion of SBC-reported data for CLECs that SBC identifies as having succeeded in their integration efforts. The discussion contains references to CLEC-specific proprietary data that AT&T's OSS declarants have not reviewed.

In fact, however, the documentation demonstrates that SBC and GE have not even negotiated the terms of any possible agreement between themselves regarding the consulting services that GE might provide to CLECs in the future, much less that those services are presently available or will be of any benefit to CLECs. See Chambers/DeYoung Supp. Decl. ¶¶ 76-77; Ham Supp. Aff., Att. E-1. Likewise, SBC's promise to "develop and offer workshops to assist CLECs with pre-ordering/ordering integration issues" in late June (Ham Supp. Aff. ¶ 16) is nothing more than a meaningless promise to take action in the future, and there is no reason to believe that the proposed workshop will be beneficial to CLECs. Chambers/DeYoung Supp. Decl. ¶ 78.[54] Such promises of future efforts to cure the deficiencies in its OSS interfaces plainly do not meet SBC's burden of proving present compliance with the requirements of section 271.[55]

C. SBC Has Not Provided CLECs With The Resources And Assistance They Require

Further, SBC still has not provided CLECs with the critical assistance that they need in order to use its interfaces and send orders over them efficiently. Although the Commission has stated that it "will give substantial consideration to the existence of an adequate change management process ["CMP"] *and evidence that the BOC has adhered to this process over*

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[54] Indeed, SBC merely states that the proposed workshop is designed to provide CLECs with a "basic understanding" of the relationship between SBC's pre-ordering and ordering interfaces (Ham Supp. Aff., Att. E-2). There is every reason to believe that such a workshop will be of no benefit whatsoever to CLECs. *See* DeYoung/Chambers Supp. Decl. ¶ 78.

[55] While Telcordia's recent "supplemental report" addressing integration purports to find that SBC's pre-ordering and ordering interfaces are integratable, it actually confirms the opposite for several reasons. Chambers/DeYoung Supp. Decl. ¶¶ 79-83. For example, the report does not even appear to address DataGate, the interface with which this Commission appeared to be most concerned in connection with SBC's initial application. Id. ¶ 80. In addition, the Telcordia report directly contradicts SBC's claims that its technical documentation is sufficient to enable CLECs to perform integration successfully, stating that it encountered difficulties in attempting to parse concatenated address information (CAI) solely with the use of SBC's documentation. Id. ¶ 82.

time,"[56] by SBC's own admission, *not one* of the releases that SBC has implemented since December has been issued in compliance with the regular notice requirements of the CMP. Instead, SBC has circumvented the CMP notice requirements by invoking the "exceptions provisions" of the CMP in every instance. SBC Letter Br. at 8 n.9; Ham Supp. Aff. ¶ 55. Those exception provisions of the CMP are supposed to be used only in "emergency situations" and "*occasionally*" where a need arises in other special situations. Ham Supp. Aff., Att. S. By making *every* change through the exception process, SBC has – unilaterally and in violation of the CMP – turned the "exception" into the rule. This abuse of the exception process has disrupted CLEC operations and resulted in admitted inaccuracies in SBC's OSS documentation. See Chambers/DeYoung Supp. Decl. ¶ 27. Further, SBC's belated explanation of its regular use of the exception process as a necessity due to "regulatory mandates" is not supported by the facts and is obviously only a pretext to justify SBC's circumvention of the normal CMP procedures. See id. ¶¶ 15-23.

In addition, SBC has still not implemented "versioning" in EDI to support two or more releases of a given software package simultaneously. Instead, SBC once again only promises to implement such versioning in late July. Ham Supp. Aff. ¶¶ 61-62. This future promise obviously does not establish present compliance with Section 271. Moreover, there is no valid reason why SBC could not have implemented versioning much earlier, as other BOCs, including Bell Atlantic, have done. See Chambers/DeYoung Supp. Decl. ¶¶ 32-35; see BA-NY Order ¶ 110 (noting Bell Atlantic's implementation of versioning).

The risks associated with poor interface release management are heightened by SBC's failure to provide an adequate test environment. See Chambers/DeYoung Supp. Decl. ¶¶ 43-47.

[56] BA-NY Order ¶ 102 (emphasis added).

The current test environment does not adequately mirror the production environment, making it a poor predictor of the impact of a new release in production. As a result, problems with SBC's releases are frequently only discovered in the production environment, which can have catastrophic consequences, especially as volumes ramp up to commercial levels. Id. ¶¶ 43-44. Moreover, unlike other BOCs, including Bell Atlantic, SBC fails to provide a standard "test deck" – accounts that CLECs can use to conduct testing of their own interfaces, testing of new functionality in upcoming releases, and regression testing of new releases efficiently. Id. ¶ 45; BA-NY Order ¶¶ 110 & n.305, 119-22 & n.342 (citing BA-NY's maintenance of standard test deck as a factor for concluding that BA-NY's test environment is adequate).

SBC also continues to fail to meet its obligation to provide CLECs with accurate and specific interface documentation, including accurate and complete documentation on SBC's deviations from industry standards. For example, SBC's documentation is inconsistent with its EDI ordering requirements, fails to adequately cross-reference ordering rules, and does not even give CLECs a list of pages that have been changed. Chambers/DeYoung Supp. Decl. ¶¶ 39, 41-42.

D. SBC Has Not Demonstrated That Its OSS Are Operationally Ready

Finally, SBC has not demonstrated that its OSS are operationally ready. Indeed, SBC's own performance data demonstrate that its performance in such key areas as provisioning accuracy is deteriorating as CLEC volumes are increasing. See Chambers/DeYoung Supp. Decl. ¶¶ 127-34. February data shows that nearly 10% of CLEC orders (and 15% of AT&T UNE-P orders) are not being provisioned as ordered. Chambers/DeYoung Supp. Decl. ¶¶ 128-29. In addition, SBC's recent performance demonstrates that it is not providing CLECs with either Daily Usage Files or wholesale bills in a timely manner. Id. ¶¶ 132-34. Furthermore, CLECs continue to experience both complete service outages and service degradations in connection

with UNE platform conversions, due in part to SBC's "three-order" process and in part to unexplained causes. Id. ¶¶ 136-45. In the most recent remedial plan that SBC provided in mid-February on a metric that measures provisioning performance on orders that require no field work, SBC reported that it was "unable to identify root cause," and that resolution of the particular trouble tickets being reviewed required SBC to investigate facilities despite the fact that they were all UNE-P conversion orders. Id. ¶ 137. SBC's own analysis heightens continuing concerns regarding SBC's ability to provision UNE-P conversion orders in a manner that will permit a smooth transition of customer service. See id. ¶¶ 136-45.

SBC also has not shown that the capacity of its OSS is sufficient to handle current and future CLEC volumes. See id. ¶¶ 146-51. SBC has not altered its 500 per hour processing limitation on AT&T's EDI orders. While AT&T and SBC are attempting to work together to better understand and address SBC's apparent limitation, AT&T remains concerned that SBC's processing limitation reflects a capacity limitation in SBC's systems that will result in delayed processing of orders, particularly as order volumes increase – a concern that has been heightened by SBC's recent statement that it has no way to capture the time that any orders are waiting in "queue" to be processed. Id. ¶¶ 146-47.

SBC has not yet implemented a scalability planning metric that was scheduled to be implemented in January 2000 in direct response to Telcordia's findings that improvements are necessary to address SBC's deficiencies in capacity planning. Id. ¶¶ 149-50 & n.66. Particularly because Telcordia found processor utilization rates that reached nearly 100% for several hours running during its capacity testing, SBC's failure to make progress toward improving scalability planning – even with a pending section 271 application – is indeed disturbing. Id.